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OPDIV, agency, staff office, or regional office.

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PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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Subpart 303.1—Safeguards

SOURCE: 54 FR 31528, July 31, 1989, unless otherwise noted.

303.101 Standards of conduct.

303.101-3 Agency regulations.

The Department of Health and Human Services' Standards of Conduct are prescribed in Part 73 of Title 45.

303.104 Procurement integrity.

303.104-4 Definitions.

(h)(1) *Procurement official* means any individual who has participated personally and substantially in the conduct of a procurement. The following classes of employees may be considered procurement officials depending on the circumstances prevailing in a given case: contracting officers, contract specialists, contract administrators, procurement agents, procurement clerks, cost/price analysts, procurement analysts, clerical support and administrative personnel, auditors, professional staff of the Division of Cost Allocation, acquisition review and approval officials, contract clearance staff, board of award members, supervisory procurement officials, small and disadvantaged business utilization specialists, project officers, project managers, program officials, officials who provide special program clearances and approvals, program managers, technical evaluation panelists, peer reviewers, source selection evaluation board members, source selection advisory council members, source selection authorities, finance officials, and procurement lawyers. Concept peer reviewers are not considered to be procurement officials when participating in project concept reviews pursuant to 42 CFR 52h.10(a). However, concept peer reviewers, or other peer reviewers, who participate in a project approach review are procurement officials. When there is a question whether an individual is a procurement official, the activities of the individual should be analyzed by the contracting officer to determine

whether there is both personal and substantial involvement in a procurement. If there is doubt in a particular case, the doubt should be resolved by including the individual as a procurement official. The contracting officer has the authority to decide who is or who is not a procurement official in a particular case. The opinion of the Office of the General Counsel (OGC) should be requested when the contracting officer believes the situation is particularly complex or sensitive. When the contracting officer's decision is disputed by the individual whose status as a procurement official is in question, the matter will be referred to the Principal Official Responsible for Acquisition (PORA) for a final determination.

(k)(1) *Source selection information* includes "derivative documents" which are documents containing references to or directly citing or paraphrasing proprietary or source selection information.

303.104-5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary, source selection information, or derivative documents shall—

(1) Ensure documents are marked as prescribed in FAR 3.104-4 (j) and (k);

(2) Provide physical security for documents in the office environment during and after duty hours; and

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, double wrapping with more than one envelope, and sealing of envelopes, as necessary.

(b) Individuals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104-5(b).

(c) Only the contracting officer has the authority to authorize individuals, or classes of individuals, access to proprietary or source selection information for each procurement except for paragraph (d) of this section.

(d) The following classes of individuals are authorized blanket access to only that source selection information developed before a request for contract is sent to the contract office, or to

later modifications or supplements to such information—

(1) The generators of the requirements, including program, scientific, and technical experts involved in the development of the statements of work, specifications, evaluation plans, budget estimates, or similar documents;

(2) Reviewing officials; and

(3) Supervisors in the management chain of the individuals listed in paragraphs (d) (1) and (2) of this section. The contracting officer shall include in the contract file names and functions of any other individuals authorized access to proprietary or source selection information.

303.104-6 Restrictions on Government officials, employees, and consultants.

(b) Procurement officials leaving the Department will be required to complete the certification set forth in Chapter 1-90 of the General Administration Manual if that official leaves the Department during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000. The administrative officer will forward a copy of the certification to each responsible contracting officer for incorporation into the contract file.

303.104-9 Certification requirements.

(c) The contracting officer shall include the contracting officer certification in the contract file for each contract action over \$100,000. Including the certificate in the contract file shall be considered notification to the head of the agency.

(e)(2) The waiver shall be submitted to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget in the Office of the Secretary for review and approval before submission to the head of the agency.

303.104-11 Processing violations or possible violations.

(a)(1) The contracting officer determination that a reported violation or possible violation of the statutory prohibitions has no impact on the impending award or selection of a source must

be submitted through channels, along with supporting documentation, to the PORA for review and approval of the determination before award of a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred through channels, along with all related information available, to the PORA (if the PORA is an SES) or to another SES official designated by the OPDIV. That individual will—

(i) Refer the matter immediately to the Office of Acquisition and Grants Management in the Office of Management and Acquisition, Office of Management and Budget, Office of the Secretary for review, which office may consult with the Office of the General Counsel and the Office of the Inspector General, as appropriate; and

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11 (c) and (d).

(b) The individual in paragraph (a)(2) of this section acts as the agency head designee with respect to actions taken under the FAR clause at 52.203-10, Remedies for Illegal or Improper Activity.

303.104-12 Ethics program training requirements.

(a) The Office of Acquisition and Grants Management in the Office of Management and Acquisition (OAGM), Office of Management and Budget in the Office of the Secretary is responsible for developing a training module which can be used by the Department's OPDIVs and Regional offices to train procurement officials. Upon receipt of the module, each OPDIV and Regional Office must train the procurement officials set forth in 303.104-4(h)(1) before they can act as procurement officials.

(b) After the training has been completed, each procurement official must sign the "Procurement Official's Certificate of Procurement Integrity" before he/she can act as a procurement official on any procurement. The certificate shall be submitted to the servicing personnel office, where the certificate will be filed on the left side of the employee's Official Personnel Fold-

er. A copy of the certificate shall be provided to the contract office which shall maintain a list of the procurement officials who have signed the certificates.

(c) Procurement officials who serve multiple contracting offices (such as procurement lawyers) shall submit copies of their certificates to OAGM with the originals being transmitted to their servicing personnel office. OAGM shall maintain a list of such procurement officials and inform cognizant contracting officers upon telephonic request whether particular individuals are included on the list.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Departmental personnel shall report suspected violations of the Gratuities clause in accordance with subpart M, Reporting Violations, of the Department's Standards of Conduct (45 CFR part 73) and General Administration Manual Chapter 5-10, rather than as specified in FAR 3.203. Refer to subpart E, Gifts, Entertainment, and Favors, of 45 CFR part 73 for an explanation regarding what is prohibited and what is permitted.

Subpart 303.3—Report of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

A copy of each report of suspected antitrust violations submitted to the Attorney General shall also be submitted to the Director, Office of Acquisition and Grants Management.

[49 FR 13964, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

Subpart 303.4—Contingent Fees

303.408 Evaluation of the SF 119.

303.408-1 Responsibilities.

(b) The chief of the contracting office shall perform the review required by FAR 3.408-1(b) and should consult with the Office of General Counsel, Business

and Administrative Law Division, when deemed necessary.

303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Reports shall be made promptly to the contracting officer.

(b)(1)-(3) [Reserved]

(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the contracting officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Director, Office of Acquisition and Grants Management.

[49 FR 13964, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

Subpart 303.5—Other Improper Business Practices

303.502 Subcontractor kickbacks.

(b) Any known or suspected violations of the Anti-Kickback Act (41 U.S.C. 51-54) shall be reported to the contracting officer who shall investigate the matter, document the findings, and report the results to the chief of the contracting office. If the results substantiate the known or suspected violation, the chief of the contracting office shall notify the Office of General Counsel, Business and Administrative Law Division and report the matter, through acquisition channels, to the head of the contracting activity. The head of the contracting activity shall take appropriate action in consonance with the Act, and notify the Director, Office of Acquisition and Grants Management of the case and its disposition.

[49 FR 13964, Apr. 9, 1984, as amended at 54 FR 24342, June 7, 1989]

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Approval of an exception to the policy stated in FAR 3.601 shall be made by the head of the OPDIV (Assistant Secretary for Management and Budget in OS cases) or the Regional Director.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

For the purposes of implementing FAR subpart 3.7, the authorities granted to the "agency head or designee" shall be exercised by the principal official responsible for acquisition.

[51 FR 44293, Dec. 9, 1986]

PART 304—ADMINISTRATIVE MATTERS

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304.101 Contracting officer's signature.

304.170 [Reserved]

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304.602 Federal Procurement Data System.

Subpart 304.8—Contract Files

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304.7000 Scope of subpart.

304.7001 Numbering contracts.

304.7002 Numbering solicitation documents.

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304.7004 Numbering basic agreements.